

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Murphy
29927

FILE:

B-215122

DATE: December 3, 1984**MATTER OF:**

Amedco Health Care, Inc.

DIGEST:

1. Bid offering alternate products was properly rejected as nonresponsive where solicitation stated that alternate bids would not be considered.
2. Protest concerning alleged improprieties in solicitation filed after bid opening is untimely under 4 C.F.R. § 21.2(b)(1) and will not be considered.
3. Protest issue first raised in comments on agency report is untimely when protester knew or should have known basis for protest almost 5 months before filing.

Amedco Health Care, Inc. (Amedco), protests the rejection of its low bid submitted in response to invitation for bids (IFB) No. F49642-83-B-0388, issued by the Washington Area Contracting Center, Andrews Air Force Base, District of Columbia. The IFB sought bids to supply Hill-Rom Model 840 electric hospital beds and Hill-Rom Model 425 manual hospital beds, or equal, for Malcolm Grow Hospital. Amedco contends that the Air Force improperly rejected its bid as nonresponsive, arguing that the specifications in the IFB are nebulous, unreasonable, and proprietary to the hospital beds of the Hill-Rom Company, another bidder.

We deny the protest in part and dismiss it in part.

The Air Force rejected Amedco's alternate bids for two models of electric hospital beds in accordance with section "L," paragraph 22, of the solicitation: "Alternate bids are not authorized under this IFB and shall be considered non-responsive and rejected." In its bid, Amedco states that each of the two subsequently rejected models is an "ALTERNATE." Although Amedco asserts that its alternate

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bids should not have been rejected, it offers no reasons why the above-quoted IFB provision is inapplicable. We have no reason to question the agency's finding that the alternate bids were nonresponsive in accordance with the IFB provision and deny Amedco's protest on this issue.

Amedco's primary bid to supply electric and manual beds was rejected as nonresponsive after the Air Force determined that the descriptive material submitted with the bid failed to establish that the beds would meet all of the salient characteristics of the Hill-Rom models which were listed in the solicitation. Specifically, the Air Force states that it cannot determine from the Amedco bid whether the offered electric bed meets the minimum 30-second high-low travel time, is walnut colored or would be delivered completely assembled. The agency also could not ascertain whether Amedco's manual bed is walnut colored, would be delivered completely assembled, or has total lock and steer lock casters.

To be responsive to a brand name or equal solicitation, a bid offering an allegedly equal product must contain sufficient descriptive material to permit the contracting officer to determine whether the offered item possesses each salient characteristic of the brand name product. The Library Store, Ltd., B-213258, Feb. 9, 1984, 84-1 C.P.D. ¶ 162. The bid must be rejected if the descriptive literature, or other information reasonably available to the contracting officer, does not show compliance with all salient characteristics. See e.g., Le Prix Electrical Distributors, Ltd., B-212518, Dec. 27, 1983, 84-1 C.P.D. ¶ 26.

The protester does not contend that its bid establishes that the offered hospital beds possess the salient characteristics listed in the IFB. Rather, Amedco argues that the salient characteristics listed in the IFB either (1) are so nebulous that it did not know whether or not its beds conformed, (2) are unreasonable, or (3) can only be met by the name brand product.

The salient characteristics questioned by Amedco were listed in the IFB. Under our Bid Protest Procedures, protests based upon improprieties in a solicitation must be filed with the contracting agency or with our Office prior to bid opening. 4 C.F.R. §§ 21.2(a), 21.2(b)(1) (1984). Since Amedco's protest was initially filed with the Air Force after bid opening, this portion of the protest is untimely and we will not consider it.

Finally, Amedco presented a new argument in its comments upon the agency report on the protest. The comments, filed in our Office on September 19, 1984, state that neither Amedco's products nor those of the successful bidder, Hill-Rom, meet the IFB requirement that hospital beds have "No Knee Break." Amedco claims that beds with "knee gatches," including Amedco and Hill-Rom beds, actually break at the knee and, therefore, are nonresponsive.

Insofar as this argument raises an issue of inconsistency between the Hill-Rom brand name product and its salient characteristics, the protest concerns an alleged impropriety in the solicitation and is untimely for the reasons discussed above. The argument also raises the issue of whether Hill-Rom's bid was responsive to the IFB. This issue is entirely new and must independently satisfy our timeliness requirements. Le Gals, Inc., B-212531.2, Oct. 5, 1984, 84-2 C.P.D. ¶ _____. A protest not based upon improprieties in a solicitation must be filed within 10 working days after the basis for protest is known. 4 C.F.R. § 21.2(b)(2) (1984). The protester attended the bid opening on March 30, 1984, and was then aware that the only other bidder, Hill-Rom, had offered its models 804 and 425 hospital beds. An award was made to Hill-Rom on April 25, 1984. Amedco's protest letter to the Air Force dated April 25 reflects a thorough knowledge of the Hill-Rom products. However, Amedco did not raise an issue of Hill-Rom's responsiveness until almost 5 months after contract award. We find that Amedco's protest regarding the responsiveness of the Hill-Rom bid was filed in our Office almost 5 months after the protester knew or should have known the basis for the protest. Therefore, we dismiss this issue as untimely. See Compucorp, B-212533, May 22, 1984, 84-1 C.P.D. ¶ 536 at 5-6.

Accordingly, we deny Amedco's protest in part and dismiss it in part.

Milton J. Dowd
for
Comptroller General
of the United States